IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1607 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

LABHUBEN, WD/O KANTIBHAI NARSINHDAS PATEL

Appearance:

1. First Appeal No. 1607 of 2002

MR PV NANAVATI for Appellant No. 1

MR AM PAREKH for Respondent No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

and

MR.JUSTICE C.K.BUCH

Date of decision: 30/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

Admit. Mr. A.M. Parekh, learned advocate waives service of admission on behalf of respondent Nos. 1 to 3 - original plaintiffs. Notice to rest of the respondents are not necessary. By consent of the counsel appearing in the matter, appeal is fixed for final hearing forthwith. Heard Mr. Nanavati, learned advocate for the appellant Insurance Company and Mr. Parekh, learned advocate for the respondents original claimants.

2. The appellant Insurance has filed this appeal restricted its claim to the compensation granted in favour of the respondent claimants by the learned M.A.C. Tribunal, Ahmedabad, as according to appellant Insurance Company, the Tribunal has awarded large sum in favour of respondent claimants while making computation on the income of the deceased and the Tribunal has accordingly awarded large sum to the extent of Rs.3,71,320/- and accordingly, the present appeal is filed by the appellant Insurance Company restricted its claim to the extent of Rs.3,71,320/-. Mr. Nanavati has while arguing the matter has taken us through the observations made by Tribunal based by evaluating the evidence led by respondents claimants on the point of quantum and he has also taken us through the evidence on the point of quantum led by the respondent claimant. In substance, it is the contention of Mr. Nanavati that the Award passed by Tribunal by awarding a sum of Rs.6,53,000/- is on a higher side passed on speculative, conjuncture and without any evidence. As the appellant Insurance Company has restricted its claim in the appeal and accepted the liability to make payment, we have issued notice to the respondents as per order dated 27th August, 2002.

3. As found from the judgement under challenge that respondents original claimants had filed claim petition before the M.A.C. Tribunal at Ahmedabad claiming compensation to the tune of Rs.7 lacs against the opponents in respect of the accident occurred on 25th June, 1998 at 7 A.M.. Deceased Kantibhai Narsinhbhai Patel was riding his scooter No. GJ-18-B-3915 and was proceeding on the road near I.O.C., Gitanjali Bungalow, Sabarmati on the left side with moderate speed and at that relevant time, opponent no. 1 driver of the taker came in wrong side in rash and negligent manner with excessive speed and hit the deceased scooterist from the rear side, with the result, deceased Kantibhai fell down on the road and died on the spot. The Tribunal has while considering the evidence has held that the applicant has proved that deceased Kantibhai had died in an accident by rash and negligent driving of driver of tanker and said

tanker was owned by opponent no. 2. The Tribunal has also while examining the evidence and the contentions raised on behalf of opponents that the deceased is also contributory negligent in the accident, has in term held that in view of the evidence led before him, there is nothing to suggest that the deceased was responsible in any manner in the accident and issue regarding contributory negligence was decided against the opponents. The Tribunal has while appreciating the evidence on the point of quantum had allowed the claim petition partly by awarding a sum of Rs.6,53,000/- with costs and interest at the rate of 10% p.a. from the date of filing of the petition till realisation and appellant opponent No. 3 Insurance Company was directed to deposit the amount of compensation by observing that the Insurance Company was to deposit the said amount within 45 days from the date of award, failing which, the applicant shall be entitled to interest at the rate of 12% p.a.

4. In the present appeal, the appellant Insurance Company has accepted the liability. However, challenge is only in respect of the quantum awarded by the Tribunal in favour of the respondents claimants as according to Mr. Nanavati that looking to the evidence led by the parties before the Tribunal, the award seems to be on higher side to the extent of Rs.3,71,320/- as per grounds raised in the appeal memo.

5. Mr. Parekh, learned advocate who appeared for respondents original claimants has on considering the contentions raised in this appeal and on considering the award of the Tribunal, he is not in a position to support the award in respect of the amount awarded by the Tribunal and further on getting consent from his clients, he has consented that the appeal of the appellant to that extent be allowed by reducing the amount of compensation to the extent of Rs.1,72,000/-.

6. Accordingly without discussing the contentions raised before us by Mr. Nanavati and without discussing the evidence and observations made by the Tribunal and while disposing of this appeal, we are modified the award of the Tribunal to the extent of Rs.1,72,000/- from the award passed by Tribunal and the respondents claimants are entitled to a sum of Rs.4,81,000/- with running interest at the rate of 9% p.a. from the date of filing of the petition.

7. Accordingly, in view of the stand taken by Mr. Parekh and as observed earlier, without expressing

anything on merits, appeal is allowed to above extent and respondents claimants are accordingly entitled to compensation for sum of Rs.4,81,000/- with running interest at the rate of 9% p.a. from the date of filing of the petition. Rest of the award is confirmed. Appeal is accordingly partly allowed. There shall be no order as to costs.

(D.K. Trivedi, J.)

(C.K. Buch, J.)
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